

STATE OF NEW YORK

DIVISION OF TAX APPEALS

---

In the Matter of the Petition	:	
of	:	
<b>EDISON AND SALVADORA BLANCO</b>	:	DETERMINATION
	:	DTA NO. 815813
for Redetermination of a Deficiency or for Refund of	:	
New York City Personal Income Tax and City of Yonkers	:	
Income Tax Surcharge under the New York City	:	
Administrative Code and Article 30A of the Tax Law	:	
for the Years 1993, 1994, and 1995.	:	

---

Petitioners, Edison and Salvadora Blanco, 128 Parkway N, Yonkers, New York 10704, filed a petition for redetermination of a deficiency or for refund of New York City personal income tax under the New York City Administrative Code and City of Yonkers income tax surcharge under Article 30A of the Tax Law for the years 1993, 1994, and 1995.

Petitioners, appearing by Lore & Levy (Norman Levy, Esq., of counsel), brought a motion for summary determination on the grounds that there are no facts at issue and petitioners are entitled to summary determination in their favor on the legal issues presented. Together with their Notice of Motion, petitioners submitted a stipulation of facts,<sup>1</sup> the affidavits of Norman Levy, Esq. and William J. Murray, Esq., and a memorandum of law.

The Division of Taxation, appearing by Steven U. Teitelbaum, Esq. (Justine Clarke Caplan, Esq., of counsel), submitted a response to the motion requesting that summary

---

<sup>1</sup>The stipulation of facts was executed by Patricia L. Brumbaugh, Esq., on behalf of the Division of Taxation, and petitioners' representative.

determination be granted in its favor. Petitioners were allowed to file a reply which was received on February 12, 1999, which date began the 90-day period for the issuance of this determination.

Upon review of the pleadings, the stipulation of facts, and the affidavits and other documents submitted in support of and in opposition to petitioners' motion, Roberta Moseley Nero, Administrative Law Judge, renders the following determination.

### ***ISSUES***

I. Whether, considering petitioners' change of residence in 1992 from residents of the City of New York to nonresidents of the City of New York, a Lotto prize won by Mr. Blanco in 1992, and payable in annual installments, is taxable by the City of New York for 1993 and subsequent years; and if so, what is the value of the lottery prize subject to tax.

II. Whether, considering petitioners' change of residence in 1992 from nonresidents of the City of Yonkers to residents of the City of Yonkers, a Lotto prize won by Mr. Blanco in 1992, and payable in annual installments, is taxable by the City of Yonkers for 1993 and subsequent years; and if so, what is the value of the lottery prize subject to tax.

### ***FINDINGS OF FACT***

A stipulation of facts was submitted into evidence in this matter. The facts as set forth in the stipulation have been adopted in this determination as follows: paragraphs "1" through "51" of the stipulation correspond with Findings of Fact "1" through "51"; paragraphs "52" through "55" of the stipulation set forth the issues as stipulated by the parties and are considered included in the issues set forth above; paragraphs "56" through "61" of the stipulation correspond with Findings of Fact "52" through "57"; and, paragraphs "62" through "84" of the stipulation correspond with paragraphs "58" through "80" of this determination, which set forth a statement of the parties' positions. Any changes made to the facts as set forth in the stipulation, other than

minor changes in wording, have been noted with footnotes. Findings of Fact “20” through “57” have been included in this determination to preserve a complete record for the parties on appeal and have not been utilized in reaching this determination (*see also, Matter of Ianniello*, Tax Appeals Tribunal, November 25, 1992).

*General*

1. Petitioners are husband and wife, and report their income on the cash basis.
2. Petitioners were residents of the City of New York on March 28, 1992.
3. Edison Blanco owned a ticket with all the numbers drawn March 28, 1992 on the Lotto game run by the Division of the Lottery (“the Lottery”), an independent unit of the Department of Taxation and Finance.
4. On April 16, 1992, Mr. Blanco was certified by an authorized signatory on behalf of the Lottery to be entitled to 1 initial payment on April 15, 1992 in the amount of \$476,100.00 and 20 subsequent annual payments in the amount of \$476,195.00 on March 15 of each year beginning on March 15, 1993.
5. At the time Mr. Blanco won the Lotto game for March 28, 1992, he was required to accept his Lotto prize as 1 initial payment and 20 subsequent annual payments.
6. On or about April 15, 1992, Mr. Blanco received the initial payment of \$476,100.00.
7. On or about March 15, 1993, 1994 and 1995 Mr. Blanco received annual payments of \$476,195.00.
8. Petitioners remained residents of New York City until July 24, 1992 when they moved to the City of Yonkers where they have resided ever since.

9. On July 24, 1992 petitioners' status with respect to the New York City resident income tax changed from resident to nonresident, and their status with respect to the City of Yonkers income tax surcharge changed from nonresident to resident.

*Returns, Withholding and Claims*

10. Petitioners filed a 1992 New York State income tax return reporting, among other things, the receipt of the initial Lotto prize installment of \$476,100.00, and petitioners paid New York State and New York City resident income taxes thereon.

11. Petitioners filed a 1993 New York State income tax return reporting, among other things, the receipt of the 1993 initial annual Lotto prize installment of \$476,195.00, and petitioners paid New York State income tax and City of Yonkers income tax surcharge thereon. Petitioners did not, however, pay City of New York resident income taxes on the 1993 Lotto prize installment of \$476,195.00 with the New York State income tax return as filed.

12. The Division subsequently assessed New York City resident income tax on the full \$476,195.00 1993 Lotto prize installment, and petitioners paid the amount assessed, less a small sum which sum is now in issue.

13. Petitioners filed a 1994 New York State income tax return reporting, among other things, the receipt of the 1994<sup>2</sup> annual Lotto prize installment of \$476,195.00, and petitioners paid New York State income tax, City of Yonkers income tax surcharge and New York City resident income tax thereon.

---

<sup>2</sup>The word "initial" has been removed from the wording as set forth in the stipulation. The 1992 payment was the initial installment, the 1993 payment was the initial annual installment, and therefore, the use of the word initial regarding the 1994 payment appears to be a typographical error.

14. Petitioners filed a 1995 New York State income tax return reporting, among other things, the receipt of the 1995<sup>3</sup> annual Lotto prize installment of \$476,195.00, and petitioners paid New York State income tax, City of Yonkers income tax surcharge and New York City resident income tax thereon.

15. With respect to the<sup>4</sup> Lotto prize installments, petitioners on their returns for 1992 (and for 1993, 1994 and 1995) did not report any special accrual upon a change in residence, but elected to have New York State and New York City income taxes withheld by the Lottery from each of the annual payments.

16. Petitioners timely filed their claims for refund with respect to the City of New York resident income tax and City of Yonkers income tax surcharge for the years 1993, 1994 and 1995.

17. The Division never granted or denied any of the refunds so claimed.

18. More than six months elapsed between the time petitioners filed their claims for refund with respect to the City of New York resident income tax and City of Yonkers income tax surcharge for the years 1993, 1994 and 1995 and the time they filed their petition in this proceeding.

#### *The Lottery - General*

19. Lotto is a lottery game run by the Lottery.

---

<sup>3</sup>The word “initial” has been removed from the wording as set forth in the stipulation. The 1992 payment was the initial installment, the 1993 payment was the initial annual installment, and therefore, the use of the word initial regarding the 1995 payment appears to be a typographical error.

<sup>4</sup>The word “annual” has been removed from the wording as set forth in the stipulation since this paragraph refers to both the initial 1992 payment and the annual 1993, 1994 and 1995 payments.

20. The Lotto game allows a player to select 6 of 54 numbers. Prizes are awarded to the player if the set of six numbers he has picked contains four or more of the numbers that are drawn. The largest prize ("jackpot") is awarded if the player has selected all six. If more than one player has selected the set of six numbers which are drawn for any particular jackpot, then they divide the prize equally.

21. The odds of any particular set of 6 numbers being the same as the 6 numbers drawn is about 1 in 25,827,165. A player gets two chances for each dollar wagered.

22. The Lottery is not required to pay as Lotto prizes any minimum amount or percentage of the total amount for which tickets have been sold.

23. Tax Law § 1612 limits Lotto prizes the Lottery may award to 40% of the total amount for which tickets have been sold, plus the interest earned thereon. However, the Lottery more commonly applies only about 38% of the total amount for which tickets have been sold, plus the interest earned thereon. The other 2% is reserved to cover eventualities, such as inclement weather or other causes, resulting in insufficient sales to cover the jackpot previously announced. In addition to the two percent reserve fund, the Lottery is authorized to use interest earned on prize funds (Tax Law § 1612) and unclaimed prize funds (Tax Law § 1614) to supplement the moneys available from ticket sales for the payment of Lotto prizes.

24. Lottery sales agents retain another 6% as commissions and the Lottery applies about 5% to cover its costs and expenses. The remainder, approximately 49%, is paid over to the Comptroller of the State of New York for disposition in accordance with the law.

25. When the Lotto game was first introduced, jackpots were paid out only in substantially equal installments, one initially and the balance in 20 subsequent annual installments on a certain date each year.

26. Under the Separate Trading of Registered Interest and Principal of Securities (“STRIPS”) program, selected Treasury securities with 10 or more years of original maturity may be maintained in the book-entry system operated by the Federal Reserve Banks in a manner that permits separate trading and ownership of the principal and interest components (marketable as zero coupon instruments in the secondary market).

27. As soon after a drawing as the Lottery has determined whether or not there has been at least one jackpot winner, it prices STRIPS which upon maturity pay approximately the amount of the annual prize installments due.

28. Prior to 1996 the Lottery purchased STRIPS at that time, that is, as soon as it determined that there had been a ticket sold which would qualify for a jackpot prize.

29. Since 1996 the Lottery has offered players the option to receive the jackpot prize either as a cash lump sum option or in escalating installments, 1 initially in the amount of 2.5% of the stated prize and the balance annually over the next 25 years in amounts increasing from 2.7% to 5.1%.

30. Since 1996, as soon as the Lottery has determined the mix between valid tickets sold for cash lump sum payments or annual installments, it purchases the STRIPS necessary to cover the installment payout obligation, and a jackpot winner who elected a lump sum payment receives an amount equal to the sum of the cost of the STRIPS plus the initial installment for a winner who had elected the installment payout.

31. In all events, the purchase of the STRIPS always occurs within a few days of the draw.

32. STRIPS are issued in multiples of \$1,000.00 payable at maturity.

33. STRIPS maturing on March 15 are not available, but STRIPS maturing February 15 are.

34. All STRIPS purchased by the Lottery are backed by the full faith and credit of the United States or an instrumentality thereof.

35. The STRIPS purchased by the Lottery to fund a particular jackpot maturing in different years over the payout period commonly have rates of return that vary significantly.

36. The average effective rate of return on all STRIPS acquired to pay a particular jackpot prize in installments usually approximates the Federal long term rate at the time of purchase, plus or minus about 0.1%.

37. STRIPS acquired to fund Lotto jackpot prize installments are registered in the name of the Lottery.

38. A Lotto jackpot winner has no equitable interest in the STRIPS acquired by the Lottery to pay those annual installments as they mature.

39. A Lotto jackpot winner being paid in annual installments has no right to convert the right to the installments into either cash or the STRIPS the Lottery has acquired to pay those annual installments as they mature.

40. The Lottery's policy, as set forth in 21 NYCRR 2803.9, is not to accelerate its obligation to pay annual installments, and it has never done so.

41. The payment of the installments of a jackpot prize is not guaranteed by the United States or any instrumentality thereof.

42. Tax Law § 1613 provides in pertinent part that

Payment of prizes shall be made by the Division [of the Lottery] to holders of the tickets to which prizes are awarded, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled. The Division [of the Lottery] shall be discharged of all further liability upon payment of a prize pursuant to this subdivision.



43. For compliance with Tax Law § 1612, the Lottery calculates the cost of a jackpot prize as the sum of the installment initially paid plus, if the jackpot winner elected a payout in annual installments, the cost of the STRIPS purchased to fund the payment of the annual installments to him.

44. Income statements on Federal Forms W-2G are provided in the case of a winner of a game operated by the Lottery who is a resident at the time of the selection of a prize-winning lottery ticket where the prize exceeds \$5,000.00.

*Mr. Blanco's Lotto Prize*

45. On or about March 30, 1992 the Lottery paid approximately \$4,724,421.26 for STRIPS to fund the 20 annual installments due Mr. Blanco commencing on March 15, 1993.

46. The face amount of the STRIPS to fund the installments due Mr. Blanco commencing March 15, 1993 was \$9,530,000.00, \$6,100.00 more than the sum of the \$9,523,900.00 payments due Mr. Blanco. This \$6,100.00 difference was attributable to the rounding up of the installments due to the nearest \$1,000.00.

47. \$4,721,397.23 was the cost to the Lottery of the portion of the STRIPS necessary to fund its liability to pay jackpot installments totaling \$9,523,900.00 to Mr. Blanco, and the balance was attributable to the \$6,100.00 referred to in the preceding paragraph.

48. The STRIPS purchased to fund the 20 annual installments due Mr. Blanco commencing March 15, 1993 mature on February 15, beginning in 1993 and continuing through 2012.

49. The difference between the amount received each year by the Lottery upon maturity of the STRIPS to fund the then current installment and the amount of the installment certified to be due Mr. Blanco is retained by the Lottery in the prize account to be paid to other winners.

50. The amount realized each year as income by the Lottery upon the proceeds of the STRIPS between February 15 and the payment of the installment to Mr. Blanco on March 15 is retained by the Lottery in the prize account to be paid to other winners.

51. Between the April 6, 1992 settlement date on the Lottery's purchase of STRIPS to fund the installments due Mr. Blanco and July 24, 1992, the Lottery earned \$101,183.28 on those STRIPS.

#### *Valuation*

52. The value of property as of March 30, 1992 of a stream of 20 annual payments of \$476,195.00 commencing March 15, 1993 using 7.61%, the Applicable Federal Rate, Long Term Compounded Annually ("AFR"), for March 1992 is calculated to be \$4,828,955.00. The value as property as of March 30, 1992 of a stream of 20 annual payments of \$476,195.00 commencing March 15, 1993 using 7.83%, the AFR, for April 1992 is calculated to be \$4,749,993.00. The Division does not dispute either of these calculations but denies their relevance in this matter.

53. \$4,828,955.00 appreciating at 7.61% compounded annually would have grown between March 30, 1992 and July 24, 1992 by \$116,789.00 to \$4,945,744.00.

54. As of March 30, 1992, Mr. Blanco's right to 20 annual payments by the Lottery of \$476,195.00 commencing March 15, 1993 had no attributes making the value of that right as property at that time greater than the fair market value of the STRIPS purchased by the Lottery to fund those annual payments. The Division does not dispute this statement, but denies its relevance in this matter.

55. As of March 30, 1992, Mr. Blanco's right to 20 annual payments by the Lottery of \$476,195.00 commencing March 15, 1993 had attributes making the then value of that right as property less than the fair market value of the STRIPS purchased by the Lottery to fund those

annual payments, to wit: (a) Mr. Blanco's right is not freely transferable; (b) Mr. Blanco's right is not Federally insured; and, (c) Mr. Blanco's right did not allow for the earning of additional income between February 15 and March 15 each year upon \$476,195.00. The Division does not dispute this statement but denies its relevance in this matter.

56. The value of the property as of March 30, 1992 of a stream of 20 annual payments of \$476,195.00 commencing on March 15, 1993 was less than the value as property as of March 30, 1992 of a stream of 20 annual payments of \$476,195.00 commencing February 15, 1993. The Division does not dispute this statement but denies its relevance in this matter.

57. The value of the property as of March 30, 1992 of Mr. Blanco's right to the stream of 20 annual payments of \$476,195.00 each commencing March 15, 1993 was no more than the \$4,721,397.23 the Lottery paid for the STRIPS purchased to fund those annual payments. The Division does not dispute this statement but denies its relevance in this matter.

***SUMMARY OF THE PARTIES' POSITIONS***

*The Division - New York City Resident Income Tax*

58. The position of the Division is that Mr. Blanco has provided no basis in law or fact for discounting the value of the lottery prize from \$9,523,955.00 (face of the 20 installments), to \$4,721,397.00 (cost of the STRIPS), \$4,828,955.00 (March 1992 AFR discounted value) or the \$4,749,993.00 (April 1992 AFR discounted value) or any other amount.

59. The position of the Division is that Mr. Blanco has an obligation to accrue to New York City sources the total face value of the payments he is entitled to receive as a result of his winning the Lotto prize with respect to the draw on March 28, 1992.

*Petitioners' Primary Argument - New York City Resident Income Tax*

60. Petitioners' position is that for purposes of determining the amount realized as income by Mr. Blanco on receiving the right to 20 annual installments of \$476,195.00 the right to receive those installments is to be valued as property and not as money.

61. Petitioners' position is that the amount realized as income by Mr. Blanco on receiving the right to 20 annual installments of \$476,195.00 was no more than the value of those instruments as of the time Mr. Blanco acquired the right to receive them.

62. Petitioners' position is that no event caused the realization of additional income with respect to Mr. Blanco's right to 20 annual installments between the time he received that right and the time he changed his status from resident of the City of New York to nonresident of the City of New York on July 24, 1992.

63. Petitioners' position is that no more than the amount realized as income on receiving the right to 20 annual installments of \$476,195.00 could have been recognized as income at that time using the accrual basis of accounting or at any time on or before July 24, 1992.

64. Petitioners' position is that no more than the amount realized as income on receiving the right to 20 annual installments of \$476,195.00 could have accrued at any time on or before July 24, 1992.

65. Petitioners' position is that no more than the amount realized as income on receiving the right to 20 annual installments of \$476,195.00 could have been specifically accrued when Mr. Blanco changed his status from resident of the City of New York to nonresident of the City of New York on July 24, 1992.

66. Petitioners' position is that the difference between (i) the amount realized as income on receiving the right to 20 annual installments of \$476,195.00 and (ii) the \$9,523,900.00 sum of those 20 installments of \$476,195.00 constitutes interest to be realized with the passage of time only after July 24, 1992, and could not have specifically accrued on July 24, 1992.

67. Petitioners' position is that the difference between (i) the amount realized as income on receiving the right to 20 annual installments of \$476,195.00 and (ii) the \$9,523,900.00 sum of those 20 installments of \$476,195.00 constitutes interest to be recognized with the passage of time only after July 24, 1992, and could not have specifically accrued on July 24, 1992.

68. Petitioners' position is that the difference between (i) the amount realized as income on receiving the right to 20 installments of \$476,195.00 and (ii) the \$9,523,900.00 sum of those 20 installments of \$476,195.00 constitutes interest which may be accrued with the passage of time only after July 24, 1992, and could not have specifically accrued on July 24, 1992.

*Petitioners' Alternative Argument - New York City Resident Income Tax*

69. Petitioners' alternative position (in contrast to ¶ 63, above) is that one event caused the realization of additional income with respect to Mr. Blanco's right to receive 20 annual installments between the time he received that right and the time he changed his status from

resident of the City of New York to nonresident of the City of New York on July 24, 1992, namely: the passage of time.

70. Petitioners' alternative position is that passage of time between receiving the right to receive 20 annual installments of \$476,195.00 and July 24, 1992 caused the realization of no more than \$101,183.00, the amount which the STRIPS purchased by the Lottery to fund the prize installments to Mr. Blanco earned between the date of their acquisition by the Lottery and July 24, 1992.

71. Petitioners' alternative position is that no more than the sum of the amounts realized on account of (a) receiving the right to 20 annual installments of \$476,195.00 and (b) account of the passage of time to July 24, 1992 could have been recognized at any time on or before July 24, 1992.

72. Petitioners' alternative position is that no more than the sum of the amounts realized on account of (a) receiving the right to 20 annual installments of \$476,195.00 (the \$4,721,397.23 which the Lottery paid for the STRIPS) and (b) the passage of time to July 24, 1992 (the \$101,183.00 which the STRIPS purchased by the Lottery to fund the prize installments to Mr. Blanco earned) could have accrued at any time on or before July 24, 1992.

73. Petitioners' alternative position is that no more than the sum of the amounts realized on account of (a) receiving the right to 20 annual installments of \$476,195.00 and (b) the passage of time to July 24, 1992 could have specially accrued when Mr. Blanco changed his status from resident of the City of New York to nonresident of the City of New York on July 24, 1992.

74. Petitioners' alternative position is that the difference between (i) the sum of the amounts realized on account of (a) receiving the right to 20 annual installments of \$476,195.00 and (b) the passage of time only after July 24, 1992, and (ii) the \$9,523,900.00 sum of those 20

installments of \$476,195.00, constitutes interest which may be realized with the passage of time only after July 24, 1992, and could not have specially accrued on July 24, 1992.

75. Petitioners' alternative position is that the difference between (i) the sum of the amounts realized on account of (a) receiving the right to 20 annual installments of \$476,195.00 and (b) the passage of time to July 24, 1992 and (ii) the \$9,523,900.00 sum of those 20 installments of \$476,195.00 constitutes interest which may be recognized with the passage of time only after July 24, 1992, and could not have specially accrued on July 24, 1992.

76. Petitioners' alternative position is that no more than the difference between (i) the sum of the amounts realized on account of (a) receiving the right to 20 annual installments of \$476,195.00, and (b) the passage of time to July 24, 1992 and (ii) the \$9,523,900.00 sum of those 20 installments of \$476,195.00 constitutes interest which may be accrued with the passage of time only after July 24, 1992, and could not have specially accrued on July 24, 1992.

#### *Miscellaneous*

77. If the Division is correct that the amount that specially accrued on July 24, 1992 with respect to the 20 Lottery prize installments due Mr. Blanco was the sum of the face amounts of each installment, then the entire annual installments received in 1993, 1994 and 1995 accrued on July 24, 1992. Otherwise:

a. If the amount that specially accrued on July 24, 1992 equals the \$4,721,397.00 cost of the STRIPS to the Lottery, then the portions of the annual payments received in 1993, 1994 and 1995 which accrued on July 24, 1992 were \$118,818.00, \$112,080.00 and \$120,947.00, respectively, and the remainder of each \$476,195.00 payment accrued after July 24, 1992; and

b. If the amount that specially accrued on July 24, 1992 was the \$4,828,955.00 discounted value of the installments using the March 1992 AFR, then the portions of the annual payments received in 1993, 1994 and 1995 which accrued on July 24, 1992 were \$124,567.00, \$118,191.00 and \$127,185.00, respectively and the remainder of each \$476,195.00 payment accrued after July 24, 1992; and

c. If the amount that specially accrued on July 24, 1992 was the \$4,749,993.00 discounted value of the installments using the April 1992 AFR, then the portions of the annual payments received in 1993, 1994 and 1995 which accrued on July 24, 1992 were \$120,334.00, \$113,693.00 and \$122,595.00 respectively, and the remainder of each \$476,195.00 payment accrued after July 24, 1992.

78. If the amount that specially accrued on July 24, 1992 was other than \$9,523,900.00 (face of the 20 installments), \$4,721,397.00 (cost of the STRIPS), \$4,828,955.00 (March 1992 AFR discounted value) or \$4,749,993.00 (April 1992 AFR discounted value) then the portions of annual payments received in 1993, 1994 and 1995 representing the amount accrued on July 24, 1992 is to be calculated using the following steps:

a. Start with the closing balance for one year/opening balance for next year, the amount that accrued on July 24, 1992 being used to start in 1993, then

b. Calculate the current interest by multiplying the opening balance by the “interest factor.” The interest factor for the payment of March 15, 1993 is not the calculated rate but rather the amount calculated — as 1 plus the calculated rate raised to the 23/24 power, less 1 — to account for the short compounding period between March 30, 1992 and March 15, 1993. Using 23/24 of the calculated rate gives a close but not completely accurate result.



In any event, in all subsequent years, the interest factor is the calculated rate unadjusted because the lapse of time is exactly one compounding period, a year.

c. Subtract the current interest so calculated from the \$476,195.00 annual payment to calculate the amount of the current year's \$476,195.00 payment applied to pay down the outstanding principal balance, and finally

d. Subtract the amount applied to pay down the outstanding principal balance from the opening balance for the year to determine the closing balance for that year/opening balance for the next.

79. If the amount that specially accrued on July 24, 1992 was other than \$9,523,900.00 (face of the 20 installments), \$4,721,397.00 (cost of the STRIPS), \$4,828,955.00 (March 1992 AFR discounted value) or \$4,749,993.00 (April 1992 AFR discounted value) but the applicable interest rate is unknown, then before applying the steps set forth in the preceding paragraph the interest rate is to be calculated by using the following formula for each payment

Value of each payment = \$476,195.00 (payment amount) \* $((1 + \text{rate})^{\text{negative power of lapsed time for the particular payment}})$ ,

where the sum of the values of each payment is equal to the amount that specially accrued on July 24, 1992.

#### *City of Yonkers Income Tax Surcharge*

80. The Division and petitioners agree that the City of Yonkers income tax surcharge does not apply to any amount of the Lottery prize received by Mr. Blanco in 1993, 1994 and 1995 which is subject to the New York City resident income tax.

#### *Additional Findings of Fact*

81. Findings of Fact 3, 4, 6 and 19 through 51, are based upon the affidavit of William J. Murray, Esq., which was submitted into evidence in this matter. Mr. Murray currently serves as Counsel to the Lottery and his affidavit was based on his personal knowledge of the activities of the Lottery and the records of the Lottery.

82. The only income at issue in these proceedings is the payments Mr. Blanco received from the Lottery (\$476,100.00 in 1992 and \$476,195.00 in 1993, 1994 and 1995). For each of these years petitioners filed returns and paid New York State personal income tax, which is not at issue in this matter. For 1992, the year that Mr. Blanco won the Lotto prize and petitioners changed their residency from New York City to Yonkers, petitioners also paid New York City resident personal income tax. Therefore, 1992 is also not at issue in these proceedings. What is at issue is petitioners' New York City resident personal income tax liability and City of Yonkers personal income tax surcharge liability for 1993 through 1995 for the Lottery prize payments as follows:

a). For 1993, petitioners paid City of Yonkers personal income tax surcharge. The Division issued a notice of deficiency asserting New York City resident personal income tax on the amount of the Lottery payment. Petitioners paid the amount due set forth in the notice of deficiency "less a small sum which sum is now in issue." Petitioners then filed a claim for a refund for both the New York City resident personal income tax and City of Yonkers personal income tax surcharge. At issue in these proceedings is the validity of the notice of deficiency and petitioners' refund claim for 1993.

b). For 1994 and 1995 petitioners paid both New York City resident personal income tax and City of Yonkers personal income tax surcharge. Petitioners then filed a claim for refund for both taxes. These claims for refund are also at issue in these proceedings.

83. Petitioners filed a request for conciliation conference with regard to the notice of deficiency for 1993. By letter dated January 27, 1997 the conciliation conferee explained that upon review of the evidence the notice of deficiency would be sustained. The letter explained that with regard to the New York City resident personal income tax the notice would be sustained pursuant to Tax Law §§ 638(c) and 1307(b) — the accrual provisions. Furthermore the letter explained that:

With respect to the Yonkers surcharge, requesters appropriately remitted the tax to Yonkers since their move to that jurisdiction. The tax is an income tax surcharge on residents of that City based on the net state tax as defined in Section 1323 of the Tax Law. Section 1327 of the Tax Law relies on section 638 for any accrual provisions. In the instant matter, no change of state residency took place; therefore, the Yonkers surcharge is due as well on all payments.

On February 28, 1997 a conciliation order was issued sustaining the notice of deficiency.

84. A petition was filed with the Division of Tax Appeals on May 5, 1997. Submitted with the petition were photocopies of petitioners' refund claims and a covering letter indicating that the claims for refund were submitted on June 30, 1995 to BCMS during the course of the conciliation process. However, both the January 27, 1997 letter from the conciliation conferee and the conciliation order relate solely to the notice of deficiency and do not mention the claims for refund. The petition filed with the Division of Tax Appeals on May 5, 1997 does reference both the conciliation order sustaining the notice of deficiency and the claims for refund. There is no jurisdictional issue because the parties have stipulated that petitioners timely filed their claims for refund and that by the time the petition was filed more than six months had passed since the filing of the claims and the Division had neither granted or denied the claims.

### ***CONCLUSIONS OF LAW***

A. In reviewing a motion for summary determination, an administrative law judge is

constrained by the following guidelines:

The motion shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented and that the administrative law judge can, therefore, as a matter of law, issue a determination in favor of any party. The motion shall be denied if any party shows facts sufficient to require a hearing of any material and triable issue of fact. Where it appears that a party, other than the moving party, is entitled to a summary determination, the administrative law judge may grant such determination without the necessity of a cross-motion. (20 NYCRR 3000.9[b][1]; *see also*, Tax Law § 2006 [6].)

The facts in this matter were the subject of a stipulation. Neither party raises any question of fact, rather, both parties request that summary determination be granted in their favor. There being no material and triable facts at issue, this matter is properly the subject of a motion for summary determination.

B. In 1992 Mr. Blanco won the Lotto game and became entitled to one initial payment on April 15, 1992 in the amount of \$476,100.00, and 20 subsequent annual payments in the amount of \$476,195.00 on March 15<sup>th</sup> of each year commencing on March 15, 1993. These payments were includable in gross income pursuant to IRC § 61(a)<sup>5</sup>, and therefore includable in New York State adjusted gross income pursuant to Tax Law § 612(a). The question in this case arises because petitioners gave up their New York City residence status on July 24, 1992 and became residents of the City of Yonkers.

When a taxpayer changes residence, in this case from being a New York City resident to a New York City nonresident, the taxpayer's final resident income tax return is subject to the special accrual provisions of the Administrative Code of City of New York § 11-1754 which

---

<sup>5</sup>Petitioners' income from the Lottery prize is not taxable as a prize under IRC § 74 as suggested by the Division, but rather is considered income from gambling and taxable under IRC § 61(a) as other income (*see, Paul v. Commissioner*, 64 TCM 955).

provides:

(a) General. If an individual changes his or her status during his or her taxable year from city resident to city nonresident . . . such individual shall file one return as a resident for the portion of the year during which he or she is a city resident, and a return under chapter nineteen of this title, for the portion of the year during which he or she is a city nonresident.

\* \* \*

(c) Special accruals. (1) If an individual changes his or her status from city resident to city nonresident, he or she shall, regardless of his or her method of accounting, accrue for the portion of the taxable year prior to such change of status any items of income, gain, loss or deduction accruing prior to the change of status . . . . The amounts of such accrued items shall be determined with the applicable modifications described in sections 11-1712 and 11-1715 as if such accrued items were includable or allowable for federal income tax purposes. (*See also*, Tax Law § 1307[a], [d], [f]; Tax Law former § 654[a], [c][1].)

Therefore, because of petitioners' move to Yonkers in 1992, Mr. Blanco's lotto prize was subject to the special accrual provisions of the Administrative Code. However, Administrative Code § 11-1754(c)(4) provides:

The *accruals* under this subdivision *shall not be required* if the individual files with the tax commission a bond or other security acceptable to the tax commission, conditioned upon the inclusion of amounts accruable under this subdivision in city adjusted gross income for one or more subsequent taxable years *as if the individual had not changed his or her resident status*. (*See also*, Tax Law § 1307[d], [f]; Tax Law former § 654[c][4]; emphasis added.)

Furthermore, Administrative Code § 11-1771(b)(3)(B) allows taxpayers who win the lottery to substitute withholdings from their winnings as an acceptable security as follows:

Withholding on lottery winnings upon change of residence. If a payee of lottery winnings . . . changes status from resident to nonresident, withholding . . . shall constitute other security acceptable to the commissioner of taxation and finance within the meaning of paragraph four of subdivision (c) of section 11-1754.

Petitioners chose to take advantage of the provisions of Administrative Code §§ 11-1754(c)(4) and 11-1771(b)(3)(B), and, as stated in the Stipulation of Facts set forth as Finding of Fact

“15”:

With respect to the annual Lotto prize installments, *petitioners on their returns for 1992 (and for 1993, 1994 and 1995) did not report any special accrual upon a change in residence*, but elected to have New York State and New York City income taxes withheld by the Division of the Lottery from each of the annual payments. (Emphasis added.)

C. The crux of petitioners’ argument is that the difference between the present value of the lotto prize on July 24, 1992 (the date of the change of residence when the accrual provisions became relevant) and the actual amount of the cash Mr. Blanco was to receive in annual payments during the course of the next 20 years, constitutes an intangible received by Mr. Blanco while he was not a resident of New York City. Relying on *Michaelsen v. State Tax Commn.* (67 NY2d 579, 505 NYS2d 585) petitioners conclude that since such income is an intangible, it cannot be taxed to a nonresident. The Division argues that since Mr. Blanco receives the Lotto prize payments in the form of cash, petitioners’ arguments regarding the valuation of the Lotto prize payments as being some type of property other than cash are inapplicable.<sup>6</sup> This issue is a question of statutory construction.

When construing a statute the primary focus is on the intent of the Legislature in enacting the statute (McKinney’s Cons Laws of NY, Book 1, Statutes § 92[a]; *see, Matter of Sutka v. Connors*, 73 NY2d 395, 541 NYS2d 191; *Matter of American Communications Technology v. State of New York Tax Appeals Tribunal*, 185 AD2d 79, 592 NYS2d 147, *affd* 83 NY2d 773, 611 NYS2d 125). When that intent is clear from the wording of the statute itself, the inquiry ends (McKinney’s Cons Laws of NY, Book 1, Statutes § 76; *see, Matter of American Communications Technology v. State of New York Tax Appeals Tribunal, supra*). Terms

---

<sup>6</sup>The two administrative law judge determinations relied upon by the Division, and responded to by petitioners in their reply brief, are not utilized in this determination since administrative law judge determinations are not precedent and are not to be cited (Tax Law § 2010[5]).

with a specific technical or commonly used meaning are to be given that meaning in statutory interpretation (McKinney's Cons Laws of NY, Book 1, Statutes § 233; *see, Matter of Moran Towing and Transp. Co. v. New York State Tax Commn.*, 72 NY2d 166, 531 NYS2d 885; *People v. Hunter*, 49 AD2d 751, 372 NYS2d 692).

D. The intent of this statutory scheme is clear from the language of the relevant provisions. Rather than paying New York City tax on the entire amount of the lottery prize with their 1992 return, petitioners opted to take advantage of Administrative Code § 11-754(c)(4) and 11-771(b)(3)(B) and file their returns for 1992 and 20 years thereafter "as if" they *had not changed their resident status*. If petitioners had continued to reside in New York City for the remaining 20 years they would have paid tax on each installment as ordinary income received in the year it was received. Having agreed to file as if they were New York City residents with respect to the Lotto prize income, it is disingenuous for petitioners to now argue that New York City may only tax that portion of the income that represents the present value of the prize at the time petitioners moved to Yonkers, because the remaining portion is an intangible of a *nonresident*. In summary, petitioners did not accrue the income from the Lotto prize to New York City at the time of the change of residence, and furthermore, petitioners agreed to file their returns as if they were residents of New York City regarding this income in future years, resulting in such income being subject to the City of New York resident personal income tax for the years in question.

Based on this analysis, and the conclusion that petitioners never accrued the income in question in the first place, the issues presented by the parties as to the valuation of the accrued income are rendered moot.

E. Petitioners also paid the City of Yonkers income tax surcharge on the Lotto prize

income for the years 1993, 1994 and 1995. At the time the petition was filed, the Division's position, pursuant to the conciliation order regarding the notice of deficiency and failure to grant or deny petitioners' refund claims, was that this income was taxable both by New York City and by the City of Yonkers. However, the parties during the course of these proceedings have stipulated that to the extent the Lotto prize income is taxable to New York City for the years 1993, 1994 and 1995, it is not taxable to the City of Yonkers. Therefore, the Lotto prize income for the years 1993, 1994 and 1995 is not subject to the City of Yonkers personal income tax surcharge since the parties are allowed to stipulate as to the outcome of an issue. (*see*, *Matter of Quirk v. Commissioner*, 928 F2d 751, 91-1 US Tax Cas ¶ 50,148; *Matter of Amherst Cablevision*, Tax Appeals Tribunal, March 7, 1996; *Matter of Mallinckrodt*, Tax Appeals Tribunal, November 12, 1992; *see also*, *Matter of Longson*, Tax Appeals Tribunal, December 4, 1997 [Division pointed out in its brief that had petitioners, who were required to accrue the gain on an installment sale at the time of their change of residence, filed acceptable security they could have filed a return every year claiming a credit for taxes paid to New Jersey as if they remained residents of New York].)

F. Summary determination in favor of petitioners is granted to the extent that it is held that the City of Yonkers income tax surcharge does not apply to petitioners' income from the Lotto prize for the years 1993, 1994 and 1995, but is otherwise denied. Summary determination in favor of the Division is granted to the extent that it is held that the New York City resident personal income tax does apply to petitioners' income from the Lotto prize for the years 1993, 1994 and 1995.

The petition of Edison and Salvadora Blanco is granted to the extent that it is held that the City of Yonkers income tax surcharge does not apply to petitioners' income from the Lotto



prize for the years 1993, 1994 and 1995, but is otherwise denied.

The notice of determination for 1993, dated April 24, 1995, is upheld.

Petitioners' claims for refund for the years 1993, 1994 and 1995 are upheld to the extent that all City of Yonkers income tax surcharge paid for those years is to be refunded to petitioners, but such claims for refund are otherwise denied.

DATED: Troy, New York  
April 8, 1999

/s/ Roberta Moseley Nero  
ADMINISTRATIVE LAW JUDGE